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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GAGLIARDI, ALBERT J

ART UNIT PAPER NUMBER

2878

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/708,713

Applicant(s)

PETERSON ET AL.

Examiner

Albert J. Gagliardi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 22-41 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 22-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/02, 11/00.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 22-41 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-12 are drawn to an emissions sensor for sensing a gas mixture of an exhaust plume of a motor vehicle including, among other elements: a source; a receiver; a canister for emitting calibration gas; a data processing computer for computing a gas mixture; and an automated control computer for calibrating the data processing computer, verifying the calibration, and monitoring the gas composition of the ambient air, classified in class 250, subclass 339.09.
- II. Claims 13-17 are drawn to an emissions sensor for sensing a gas mixture of an exhaust plume of a motor vehicle including, among other elements: a console positioned on a side of a detection space, wherein the console includes at least a source; a receiver; a vehicle detector; a canister for emitting calibration gas; a data processing computer for computing a gas mixture; and a vehicle identification device, classified in class 250, subclass 339.13.
- III. Claims 18-21 are drawn to combination invention including a remote emissions sensing system for sensing a gas mixture of an exhaust plume for motor vehicles including: a plurality of emissions sensors comprising, among other elements: a console, wherein the console includes at least a vehicle detector, a canister for emitting calibration gas, a data processing computer for computing a gas mixture, and a vehicle identification device; an automated control computer for calibrating

the data processing computer, verifying the calibration, and monitoring the gas composition of the ambient air; and a communications channel for communication between the sensors and the control center, the sensors responding to repeated calibration rejections by transmitting a help signal to the control center, classified in class 250, subclasses 339.09, 339.13 and 702/183

- IV Claims 22-23 are drawn to a system or method for sensing a gas mixture composition of an exhaust plume of a motor vehicle including, among other elements: a source, a receiver; a non-specific calibration system, and a non-specific control computer for coordinating operation of the source, receiver, and calibration system, classified in class 250, subclass 338.5.
- V. Claims 24 and 38-41 are drawn to a system or method for monitoring emissions of moving vehicles comprising a plurality of remote emissions sensing devices and a central control connected to the plurality of remote emissions sensing devices via a communications channel and performing diagnostics on the sensing devices, classified in class 702/183
- VII. Claims 25-37 are drawn to a method of monitoring vehicle emissions comprising gathering vehicle emissions data in a remote testing device and periodically calibrating the remote emissions testing device, classified in class 702, subclass 104.

Inventions I, II, III, V and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the inventions have separate utility such as: allowing

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automatic gas-reference calibration of conventional optical emission sensors (Group I); for allowing conventional optical emission data collection with in a simpler and more compact design (Group II); allowing easier calibration and accurate measurement of exhaust emissions of conventional emission data collection systems, including systems relying on gas reference cells or a reference standard for calibration (Group IV); allowing simpler data collect and diagnostics of conventional emission data collection systems including non-spectroscopic or non optical type emission testing sensors (Group V); allowing easier calibration and accurate measurement of exhaust emissions of conventional emission data collection systems including non-spectroscopic or non optical type emission testing sensors (Group VII). See MPEP § 806.05(d).

Invention III and inventions I and II are related as combination and subcombinations. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because at least claims 1 and 13 are evidence claims that provide evidence that the combinations do not require the particulars of the subcombination for patentability. The subcombination has separate utility such as described above.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

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on the merits. Accordingly, claims 22-41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03, and MPEP § 1451.

The examiner notes that even though the original claims are viewed as relating to three different inventions, no restriction among the claims is required since they are original claims. See MPEP § 1451.

The examiner also notes that while the new claims have been preliminarily identified as relating to four different inventions such list may not be exhaustive and new groups could be identified in further prosecution.

Information Disclosure Statement

2. The information disclosure statement filed August 7 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Drawings

Applicant must submit a clean copy of each drawing sheet of the printed patent. If such copy complies with §1.84, no further drawings will be required. New drawing sheets are not to

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be submitted, unless some change is made in the original patent drawings. Such changes must be made in accordance with 37 CFR 1.173(b)(3). The Office will not transfer the drawings from the patent file to the reissue application.

Allowable Subject Matter

3. Claims 1-21 are allowed.

4. The following is an examiner's statement of reasons for allowance:

The claims are considered allowable for reasons of record as present in parent application 08/739,487.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. This application is in condition for allowance except for the following formal matters:

Cancellation of the non-elected claims as outlined above.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.


6. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert J. Gagliardi whose telephone number is (571) 272-2436. The examiner can normally be reached on Monday thru Friday from 9 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Albert J. Gagliardi
Primary Examiner
Art Unit 2878

AJG